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*Attorneys for Mineral County*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	IN EQUITY NO. C-125-RCJ-WGC
WALKER RIVER PAIUTE TRIBE,	)	Subproceeding: C-125-B
	)	
Plaintiff-Intervenor,	)	
vs.	)	3:73-CV-00127-RCJ-WGC
	)	
WALKER RIVER IRRIGATION DISTRICT,	)	<b>MINERAL COUNTY RESPONSE TO</b>
a corporation, et al.,	)	<b>COURT'S AUGUST 2, 2012 ORDERS</b>
	)	<b>CONCERNING THRESHOLD ISSUES</b>
Defendants.	)	<b>AND TIMING AND NECESSITY OF</b>
	)	<b>ANSWERS</b>
<hr/>		
MINERAL COUNTY,	)	
	)	
Proposed Plaintiff-Intervenor	)	
vs.	)	
	)	
WALKER RIVER IRRIGATION DISTRICT,	)	
a corporation, et al.	)	
	)	
Proposed Defendants.	)	

1 Pursuant to the Court's Order during the August 2, 2012, status conference in the  
2 above-captioned subproceeding, Mineral County hereby submits the following Response  
3 summarizing and referencing Mineral County's positions and previous filings related to  
4 threshold issues and the timing and necessity of answers. Mineral County hereby incorporates  
5 by reference its 2008 and 2009 filings on threshold issues and answers referenced below.  
6

7 **I. Threshold Issues**

8 The Court's April 18, 2000, Case Management Order ("CMO") in subproceeding C-125-  
9 B directs the Magistrate Judge to "consider and make a preliminary determination of the  
10 threshold issues to be addressed at the outset of the litigation on the U.S./Tribe counterclaims."  
11 CMO at 9, ¶11 (Doc. No. 108).<sup>1</sup> On April 24, 2008, pursuant to Minutes of the Court dated  
12 August 20, 2007 (Doc. No. 1221), February 1, 2008 (Doc. No. 1304), and April 15, 2008 (Doc.  
13 No. 1322), after an unsuccessful attempt to reach agreement on a list of proposed threshold  
14 issues, Mineral County, the United States and Walker River Paiute Tribe, and Defendants  
15 Walker River Irrigation District, Nevada Department of Wildlife, Joseph and Beverly Landolt,  
16 and Circle Bar N Ranch, submitted separate lists of proposed threshold issues and requested  
17 briefing on what constitutes the proper list of threshold issues. Briefing took place in the fall of  
18 2008, but the Court has yet to determine the proper list of threshold issues in this case.  
19

20 Mineral County's list of threshold issues, submitted to the Court on June 24, 2008 (Doc.  
21 No. 1362), is as follows:  
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23  
24

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25  
26 <sup>1</sup> Unless otherwise noted, all Doc. Nos. cited in this summary are to the C-125-B subproceeding.  
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28

**a. Service**

1. Should the schedule for completion of service in the C-125-B case be adjusted?
2. How will the determination be made whether and when service in the C-125-B case is complete?
3. Is publication appropriate for any remaining potential defendants in the C-125-B case?

**b. Jurisdiction**

1. Does the Decree Court have jurisdiction to adjudicate the Tribal Claims to both ground and surface water?
2. Does the Decree Court have jurisdiction over groundwater in this case?
3. Does the Decree Court have jurisdiction over groundwater used pursuant to state law outside the exterior boundaries of the Walker River Paiute Indian Reservation?

**c. Applicable Law**

1. What law governs the pumping of groundwater on and off the Walker River Paiute Indian Reservation by the Tribe or the United States on its behalf and how should the Court resolve any conflicts in applicable law?
2. Is the Decree Court required to accept the distinction drawn between surface water and groundwater rights provided by California and Nevada law?

As explained in greater detail in Mineral County's threshold issues briefing submitted in 2008 (Doc. Nos. 1412, 1441, and 1455), by its nature, a preliminary threshold issue would appear to be one that properly is decided at the outset of litigation in order, like other pretrial

1 tools, to “aid the efficient presentation of a case in order to maximize the chances of a fair and  
2 just result.” Cf. Hon. Milton Pollack, Pretrial Procedures More Effectively Handled, 65 F.R.D.  
3 475, 477 (1975) (discussing generally the proper objectives of pretrial procedures). Mineral  
4 County’s list of threshold issues include those that properly are addressed at the outset of  
5 litigation, i.e., issues of service, jurisdiction, and applicable law. Mineral County’s list is  
6 consistent with the CMO’s evident purpose of designating threshold issues to simplify this  
7 complex litigation and organize the case in such a way as to address simpler, more easily decided  
8 issues that require minimal resources before deciding issues that require significant expenditure  
9 of resources and time.  
10

11         Conversely, a number of the issues proposed by the Primary Defendants are factually  
12 intensive, go to the merits of the Tribal Claims, and do not seem proper for the Court to address  
13 at this stage of the case. Designation of threshold issues that require extensive discovery and go  
14 to the substantive merits of the Tribal Claims would not serve to streamline litigation, but could  
15 well result in unnecessary discovery. Such an approach also would be contrary to the CMO’s  
16 phased approach. For these reasons, and for those more thoroughly explained in Mineral  
17 County’s 2008 Threshold Issues briefing, threshold issues should be limited to those of a  
18 procedural or choice of law nature that properly are addressed at the outset of litigation and  
19 should not include those that go to the merits of the Tribal Claims.  
20

## 21                 **II.       Timing and Necessity of Answers**

22         In early 2009, pursuant to the Minutes of the Court dated December 3, 2008 (Doc. No.  
23 1468), the primary parties (Mineral County, the United States, Walker River Paiute Tribe,  
24 Walker River Irrigation District, Nevada Department of Wildlife, Joseph and Beverly Landolt,  
25 and Circle Bar N Ranch) briefed the issue of timing and necessity of Answers. As noted in its  
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27  
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1 Response to the United States of America's and Walker River Paiute Tribe's Brief Regarding  
2 When Answers Need to be Filed in This Action (Doc. No. 1497), Mineral County has no  
3 objection to the United States and Walker River Paiute Tribe's treatment of answers in their  
4 January 16, 2009 Brief Regarding When Answers Need to be Filed in This Action (Doc. No.  
5 1487).  
6

7  
8 Respectfully submitted this 20<sup>th</sup> day of August, 2012,  
9

10 /s/ SIMEON M. HERSKOVITS

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26 *Attorneys for Mineral County*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of August, 2012, I electronically filed the foregoing **MINERAL COUNTY BRIEF ON THRESHOLD ISSUES AND TIMING AND NECESSITY OF ANSWERS** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses that are registered for this case;

and I further certify that on this 20th day of August, 2012, I caused a copy of the forgoing to be served on the following non CM/ECF participants by U.S. Mail, postage prepaid,:

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